United Nations A/54/873

General Assembly

Distr.: General
22 May 2000

Original: English

**Fifty-fourth session**
Agenda item 130
**Financing of the activities arising from Security Council resolution 687 (1991): United Nations Iraq-Kuwait Observation Mission**

# Financing of the activities arising from Security Council resolution 687 (1991): United Nations Iraq-Kuwait Observation Mission

**Report of the Secretary-General**

## I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 54/18 of 29 October 1999, in which the Secretary-General was requested to submit a comprehensive report on the question of the payment of mission subsistence allowance in the United Nations Iraq-Kuwait Observation Mission (UNIKOM).

2. It should be recalled that the Secretary-General submitted an extensive report on the issue during the fifty-third session of the General Assembly (A/53/1023). That report concluded that there had been a considerable overestimation of the overpayment in respect of military observers. The report of the Board of Auditors, also requested in General Assembly resolution 54/18, generally confirms the conclusions presented in the report of the Secretary-General (A/54/869).

3. Under the circumstances, the scope of the present report is limited to providing current information on the amount of the overpayment, as well as the amount recovered as at 31 March 2000. It also updates the information regarding the judicial process in respect of civilian staff members and recommends a course of action as regards military observers.

## II. Civilian staff members — the judiciary process

4. With regard to the civilian staff members, the previous report of the Secretary-General highlighted some of the peculiarities of the rules governing mission subsistence allowance then in effect and pointed out the considerable potential for different interpretations and applications of the policy and procedures, which led to problems in the past, not only in UNIKOM, but also in other missions.

5. As previously reported, staff members have used the recourse mechanism available to them and challenged the principles on the basis of which the conclusions were reached that mission subsistence allowance policies had been misapplied. On 11 March 1999, the United Nations Administrative Tribunal issued a judgement remanding the case to the Joint Appeals Board for consideration on the merits.

6. In its report No. 1374, dated 2 November 1999, the Joint Appeals Board unanimously agreed that the UNIKOM administration exceeded its authority when

00-44077 (E) 220500

it authorized payment of mission subsistence allowance to UNIKOM staff for annual leave for which no mission subsistence allowance leave credits had accrued, for official holidays and non-working days which fell during the annual leave for which no mission subsistence allowance leave credits had accrued and for occasional time off ("compensatory time off") taken outside the mission area in conjunction with annual/home leave for which no mission subsistence allowance leave credits had accrued.

7. The Joint Appeals Board also unanimously agreed that the Organization remained the rightful owner of the mission subsistence allowance overpayments and has the right to reclaim the overpaid public funds from the staff. The Secretary-General agreed with the conclusions of the Joint Appeals Board. However, the Secretary-General did not accept two additional recommendations made by the Joint Appeals Board, which would have reduced the total amount of overpayments to be recovered from the staff members.

8. At the time of the writing of the present report, the appellants have sought an extension of the time limit for submission of an appeal to the United Nations Administrative Tribunal. The judicial process in respect of civilian staff is therefore still ongoing.

## III. Military observers

9. In its resolution 54/18, the General Assembly also requested the Board of Auditors to undertake a comprehensive audit of UNIKOM, in particular the question of overpayment of mission subsistence allowance. The Secretary-General has taken note of the report of the Board of Auditors and agrees with the recommendations made therein (A/54/869).

10. It is noted that the findings and conclusions of the Board of Auditors regarding the mission subsistence allowance payments to military observers are generally consistent with the conclusions of the review conducted by the Secretariat, that is that UNIKOM mission subsistence allowance payments to military observers in respect of annual leave and compensatory time off were inconsistent with the established procedures or were paid based on a formula which differed from the established one, but that these irregularities did not result in any final overpayment since the amounts paid were eventually earned. The mission subsistence allowance payments for compensatory time off spent in the home country were made in accordance with the relevant provisions of the Notes for the Guidance of Military Observers on Assignment to UNIKOM.

## IV. Conclusion

11. Further review of the circumstances and the deviation from policy directives that led to the reported overpayment revealed not only the intractable complexity of the old mission subsistence allowance policy, but also that policies and practices which were more appropriate to civilian personnel were extended to military observers whose service with UNIKOM was governed by other directives, namely by the above-mentioned Notes for Guidance specifically issued for UNIKOM.

12. In view of the above, and subject to the approval of the General Assembly, it is the intention of the Secretary-General to continue recovery of funds in respect of civilian staff. It should be noted that the judicial process is still ongoing and that the final determination with regard to the overpayment or recovery of funds in respect of staff members is therefore subject to the judgement of the United Nations Administrative Tribunal. As regards military observers, it is the intention of the Secretary-General, subject to the approval of the General Assembly, to cease the recovery efforts as regards military observers and to reimburse the amounts already recovered to the individuals concerned.

# Annex

## United Nations Iraq-Kuwait Observation Mission
## Summary of mission subsistence allowance overpayment
(as at 31 March 2000)

| *Category* | *Number of staff* | *Amount due* | *Amount recovered* | *Balance* |
|---|---|---|---|---|
| Civilian staff on Headquarters payroll | 137 | 624 191.50 | 619 738.71 | 4 452.79 |
| Staff away from Headquarters | 34 | 148 154.50 | 137 291.26 | 10 863.24 |
| Separated | 21 | 78 747.50 | 17 462.50 | 61 285.00 |
| **Total** | | **851 093.50** | **774 492.47** | **76 601.03** |
| Military observers | 1 425 | 5 460 188.03 | 191 910.22 | 5 268 277.81 |
| **Grand total** | | **6 311 281.53** | **966 402.69** | **5 344 878.84** |

United Nations A/54/874

General Assembly

Distr.: General
19 May 2000

Original: English

**Fifty-fourth session**
Agenda items 142 and 143

**Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991**

**Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994**

# Comments on the report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

## Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the note by the Secretary-General on the comments on the report of the Expert Group to Conduct a Review of the Effective Operation and Functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/54/850). The Committee also had before it the report of the Expert Group (A/54/634). During its consideration of the Secretary-General's note, the Committee met with the Chairman of the Expert Group, the Registrars and the Deputy Prosecutors of the Tribunals and with representatives of the Secretary-General who provided additional information.

2. The Secretary-General's note included, in annex I, the comments of both the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) on the report of the Expert Group. The note was prepared pursuant to General Assembly resolutions 54/239 and 54/240 of 23 December 1999, in which the Assembly requested the Secretary-General to obtain comments and observations from the two Tribunals on the report of the Expert Group and to submit them, through the Advisory Committee, to the Assembly for consideration at its resumed fifty-fourth session. In respect to the International Tribunal for the Former Yugoslavia, the consolidated view of the Chambers, the

00-44083 (E) 220500

Office of the Prosecutor and the Registry on most recommendations of the Expert Group are contained in annex I to the note by the Secretary-General (A/54/850); in some cases, where one or more organs have different views, their comments are presented separately. The comments of the International Criminal Tribunal for Rwanda are presented in a unified response, identifying the organ offering the views. In addition, the Prosecutor of ICTY, who also serves concurrently as Prosecutor of ICTR, provided observations that cover both Tribunals.

3. The report of the Expert Group was prepared pursuant to General Assembly resolutions 53/212 and 53/213 of 18 December 1998, in which the Assembly requested the Secretary-General, *inter alia*, with a view to evaluating the effective operation and functioning of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, with the objective of ensuring the efficient use of the resources of the Tribunals, to conduct a review in full cooperation with the Presidents of the Tribunals, as recommended by the Advisory Committee in its reports[1] and in the statement made by the Chairman of the Advisory Committee before the Fifth Committee at its 37th meeting, without prejudice to the provisions of the statutes of the Tribunals and their independent character and to report thereon to the relevant organs of the United Nations.

4. The Advisory Committee has also received a note prepared by ICTR on the current state of ICTR Registry operations, including recent reforms in the administrative and judicial support areas. The Committee understands that the note is also being made available to the Fifth Committee. **The Committee acknowledges the great difficulties under which ICTR, in particular, operates, and underlines that these difficulties deserve continuing attention.**

5. **The Committee recalls its view that the main focus of the Expert Group review was to be on judicial rather than administrative management. Nevertheless, it welcomes a number of the recommendations of the group that deal with administrative, budgetary and non-judicial matters. It is the intention of the Committee to follow up on these recommendations in conjunction with its review of the respective budgets of the Tribunals. The Committee trusts that the organs of the Tribunals will expeditiously resolve the above issues that fall within their purview. The Board of Auditors and the Office of Internal Oversight Services are meanwhile encouraged to continue to pay particular attention to management issues that are within their mandates.**

6. The Advisory Committee notes that, as indicated in paragraph 6 of the note of the Secretary-General (A/54/850), the report of the Expert Group contains 46 recommendations of which 16 recommendations have already been put into practice by the Tribunals (recommendations 1, 2, 6, 13, 14, 17, 18, 22 to 27, 31, 36 and 38) and 11 recommendations (4, 6, 7 to 12, 16, 17 and 31) have been expressly indicated as subject to further review by the Chambers of one or both Tribunals. Furthermore, the Committee was informed that other recommendations that were in different stages of review for acceptance or otherwise included recommendations 3, 5, 6, 15, 20, 21, 34, 35, 37, 43 and 45, or elements thereof. Given the nature and scope of the recommendations of the Expert Group, many comments, or certain elements thereof, fell into more than one category. **The Committee requests expeditious completion of this review.**

7. The Advisory Committee notes that responses provided by ICTR on various recommendations were not as detailed or systematic as those given by ICTY. The Committee is aware that the Tribunals are two independent entities, operating and functioning in different environments, whose practices may often diverge.[2] **Therefore, the Committee cautions against calling for complete harmonization in applying the recommendations of the Expert Group.**

8. The Advisory Committee notes that comments of the Secretary-General on those recommendations that may have implications for the administrative and financial functioning of the Tribunals, such as recommendations 15, 19 to 21, 29, 34 and 40 to 45, are also included in the note by the Secretary-General (A/54/850, annex I).

9. The Advisory Committee also notes that, with regard to matters under the purview of the Security Council, particularly those regarding possible modifications to the statutes of the Tribunals, such as recommendations 20, 21, 43 and 45, the Secretary-General intends to make arrangements to ensure that the Security Council has for its consideration the report of the Expert Group and his note.[3] The Committee was informed, upon enquiry, that in the event of a Security Council decision on additional judges, revised

estimates would be presented. In the event of approval by the Security Council of the recommendation to use temporary ad hoc judges as a practical solution for expediting the completion of trials, the procedures laid down in the resolution on unforeseen and extraordinary expenses would be followed, a practice similar to that followed in respect to ad hoc judges of the International Court of Justice.

10. The Advisory Committee further notes that, while the report of the Expert Group, together with the note by the Secretary-General, will be considered during the resumed session of the Fifth Committee under agenda items 142 and 143 on the financing of the Tribunals, it is expected that the Plenary of the General Assembly will also consider the report of the Expert Group and the note by the Secretary-General at its fifty-fifth session under the relevant agenda items on the reports of the Tribunals. **The Advisory Committee recommends that the General Assembly acknowledge with appreciation the report of the Expert Group.**

11. The Committee notes that the report of the Expert Group was submitted to the Secretary-General on 11 November 1999. In this connection, the Advisory Committee points out that various recommendations with budgetary implications have already been overtaken by events.[4] The Committee intends to revisit these matters, should that be necessary, as well as to review the budgetary implications of other recommendations in the context of the budget proposals for the Tribunals for 2001. **The Committee recommends that the Secretary-General ensure that, before requesting additional resources for the Tribunals to implement a particular recommendation of the Expert Group, every effort should be made to fully and effectively utilize existing resources within the Tribunal concerned.**

12. The Advisory Committee notes that recommendations 43 and 45 affect the statutory roles of the Registries vis-à-vis the Chambers and the Prosecutor in the matters covered by these recommendations. **In this connection, the Committee recalls that in recommending the establishment of the Expert Group it indicated that the review would be undertaken in full respect of the provisions of the statutes of the Tribunals. Accordingly, unless the statutes are amended by the Security Council, the Committee recommends that the present practice followed by the two Tribunals on the matters covered in recommendations 43 and 45 continue to be followed. Furthermore, the Committee would encourage that steps be taken by the Tribunals to implement such refinements, as may be necessary, to resolve those shortcomings that led the Expert Group to suggest the changes reflected in recommendations 43 and 45. The Committee recommends, in this connection, that the Secretary-General prepare the budget proposals for the Tribunals for 2001 on the basis of the existing structure of the Tribunals. In this connection, the Committee recalls its comments in its report of 2 December 1999.[5]**

13. **In the event that the Security Council were to decide to amend the statutes of the Tribunals, the Advisory Committee trusts that it would, in the first instance, carefully review and take fully into account the comments of the Secretary-General and of the organs of the Tribunals on recommendations 43 and 45.**

14. **Moreover, the Advisory Committee recommends that the Secretary-General prepare a separate report for the fifty-fifth session of the General Assembly, in the context of the budgets of the Tribunals, on the actions taken or to be taken in respect of the recommendations that remain under review, as mentioned in paragraph 6 above. Furthermore a comprehensive report should be submitted to the fifty-sixth session of the General Assembly on the results of the implementation of the recommendations of the Expert Group.**

*Notes*

[1] A/53/651, paras. 65-67, and A/53/659, paras. 84-86.

[2] A/54/850, paras. 18-25, 187, 197 and 198.

[3] Ibid., para. 4.

[4] Ibid., paras. 111, 152 and 158.

[5] A/54/645, para. 2.